IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 101 OF 2006
WITH
CHAMBER SUMMONS NO. 298 OF 2006
IN
WRIT PETITION (PIL) NO. 87 OF 2006

Bombay Environmental Action Group & Anr. ...Petitioners

Versus

The State of Maharashtra and others ... Respondents

And

Charkop Veena Vihar Co-op. Hsg.Soc. Ltd. ... Applicant

Mr. G.S. Godbole for the applicant in support in Chamber Summonses No. 101 of 2006 and 298 of 2006.

Mr. N.H. Seervai, Senior Advocate, with Mr. Gautam Patel,and Mr. Jagtiyani instructed by M/s. M.V. Jayakar & Company, for the petitioners to show cause.

Mr. R.M. Kadam, Advocate General, with Mr. K.R. Belosay, Government Pleader, for respondent Nos.1,5, 5A and 9 to show cause.

Mr. Rajiv Chavan for respondent No.2 to show cause.

Mr. R.V. Govilkar for respondent No.3 to show cause.

Mr. K.K. Singhvi, Senior Advocate, with Mrs. Shobha Ajitkumar, for respondent No.4 to show cause.

CORAM: **H.L. GOKHALE, Ag. C.J.,** & **V.M. KANADE, J.**

DATE: **JANUARY 24, 2007**.

P.C.

Chamber Summons No. 101 of 2006 is taken out by one Charkop Veena Vihar Co-operative Housing Society Limited. The society wants to join in the petition i.e. prayer (a). The construction of the society is complete but occupation is not permitted in view of orders passed in this petition. We accordingly grant this prayer (a). The applicant society is allowed to be joined as party respondent in the main petition. Necessary amendment to be carried out within a period of two weeks.

2. The submission of the applicant is that this society is situated similarly to some 16 other societies. All these 17 societies are situated on plots adjacent to each other at Charkop, Kandivli (West), Mumbai. Their case is that their plots have been approved for construction as per World Bank Project made in 1993 and their construction was permitted and started much before the oder that was passed by the Division Bench in the PIL No.87 of 2004 on 6th October 2005. A Division Bench of this Court vide its order dated 5th May, 2006, directed the Executive Engineer, Buildings Proposal of the Municipal Corporation of Greater

Mumbai, to visit the site on 10th May, 2006, and report whether any destruction of mangroves took place in violation of the guidelines issued by the Ministry of Environment and Forests and order of this Court dated 6th October, 2005. The petitioners were also permitted to attend at the time of inspection. In an affidavit filed in the earlier Chamber Summons No. 99 of 2006, by Mr. S.N. Abhang, Executive Engineer, he has stated that in 17 Societies no destruction of mangroves had taken place, and in view thereof the Division Bench on 29th June, 2006, noted that necessary permission, I.O.D. and Completion certificate were also given. The Court, therefore, directed that their application be considered for grant of occupation certificate. This case is similar to those societies. Mr. Godbole prays that same order be granted. Mr. Seervai opposes this prayer. However, the fact remains and we find it difficult to make a different order.

3. It is submitted that the case of Dhanashree society is similar to those 16 societies and similar order be passed. This prayer is opposed by the learned counsel for the petitioners. He submitted that the pictures taken by the satellite as well as photographs show that earlier there were mangroves. We have noted the submissions of both the parties The facts of the present society are similar to those in the

cases of 16 societies and, therefore, it is difficult to make any distinction. Therefore the application of the applicant society for grant of occupation certification will also be required to be considered by the corporation.

4. Similarly, in Chamber Summons No. 298 of 2006, same submission is made. The building in question is also situated on the adjoining plot at Charkop, Kandivli (West), Mumbai. In this matter also city survey was directed to be done and a report has been made and an unaffirmed copy of the affidavit has been made available to the parties. We are told that there is some difficulty in affirming the affidavit for the reasons that the officer concerned is on election duty. It is stated that the affidavit will be sworn and will be filed on or before 31st January 2007. Having heard the parties and the facts of the present case are similar to those 16 societies, this Chamber Summons will also have to be granted. Thus the applicant will be permitted to intervene and their request for grant of occupation certificate will also have to be directed to be considered by the Municipal Corporation.

5. In view of the aforesaid position, at this stage the learned counsel for the applicants state that they do not want to press prayer

clause (a) since there is no reason for the applicants to remain in this petition. In the circumstances prayer (a) is not pressed by them.

Both the Chamber Summons are disposed of accordingly.

ACTING CHIEF JUSTICE

V.M. KANADE, J.